

## CHAPTER 65

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**PUBLIC UTILITIES**

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**HOUSE BILL 21-1131**

BY REPRESENTATIVE(S) Amabile and Catlin, Arndt, Bernett, Bird, Cutter, Duran, Froelich, Kennedy, Lontine, Michaelson Jenet, Roberts, Sirota, Valdez D., Weissman, Woodrow;  
also SENATOR(S) Winter and Coram, Gonzales, Hansen, Jaquez Lewis, Moreno.

**AN ACT****CONCERNING GOVERNANCE REQUIREMENTS FOR COOPERATIVE ELECTRIC ASSOCIATIONS.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, **amend** 40-9.5-102 as follows:

**40-9.5-102. Definitions.** ~~For the purposes of~~ AS USED IN this part 1, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "Cooperative electric association" OR "ASSOCIATION" includes a nonprofit electric corporation or association but does not include nonprofit generation and transmission electric corporations or associations.

(2) "JOINT MEMBERSHIP" MEANS A MEMBERSHIP IN A COOPERATIVE ELECTRIC ASSOCIATION IN WHICH MORE THAN ONE INDIVIDUAL ARE TREATED AS A SINGLE MEMBER OF THE COOPERATIVE ELECTRIC ASSOCIATION IN ACCORDANCE WITH THE COOPERATIVE ELECTRIC ASSOCIATION'S BYLAWS. EACH INDIVIDUAL IN A JOINT MEMBERSHIP IS A JOINT MEMBER.

**SECTION 2.** In Colorado Revised Statutes, 40-9.5-108, **amend** (2); and **add** (1.5) and (4) as follows:

**40-9.5-108. Public meetings - definition.** (1.5) ALL MEETINGS OF A GENERATION AND TRANSMISSION ASSOCIATION ARE DECLARED TO BE OPEN MEETINGS AND OPEN TO THE MEMBERS, CONSUMERS, AND NEWS MEDIA AT ALL TIMES; BUT SUCH ASSOCIATION, BY A TWO-THIRDS AFFIRMATIVE VOTE OF THE BOARD MEMBERS PRESENT, MAY GO INTO EXECUTIVE SESSION FOR CONSIDERATION OF DOCUMENTS OR TESTIMONY GIVEN IN CONFIDENCE.

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(2) (a) Before ~~the~~ A board of directors convenes in executive session PURSUANT TO SUBSECTION (1) OR (1.5) OF THIS SECTION, the board shall announce the general topic of the executive session.

(b) At every regular meeting of the board of directors OF AN ASSOCIATION OR A GENERATION AND TRANSMISSION ASSOCIATION, members of the association shall be given an opportunity to address the board on any matter concerning the policies and business of the association. The board may place reasonable, viewpoint-neutral restrictions on the amount and duration of public comment.

(c) Written minutes shall be made of all meetings of the board of directors OF AN ASSOCIATION OR A GENERATION AND TRANSMISSION ASSOCIATION. The minutes shall be posted on the website of the association OR GENERATION AND TRANSMISSION ASSOCIATION as soon as they have been approved and shall remain posted until at least six months after the date of the meeting. Upon request by a member of the board, that member's own vote on any issue shall be noted in the minutes.

(4) AS USED IN THIS SECTION, "GENERATION AND TRANSMISSION ASSOCIATION" MEANS A NONPROFIT GENERATION AND TRANSMISSION ELECTRIC ASSOCIATION THAT PROVIDES WHOLESALE ELECTRIC SERVICE DIRECTLY TO COLORADO COOPERATIVE ELECTRIC ASSOCIATIONS THAT ARE ITS MEMBERS.

**SECTION 3.** In Colorado Revised Statutes, **add** 40-9.5-108.5 as follows:

**40-9.5-108.5. Public posting of documents.** (1) EACH COOPERATIVE ELECTRIC ASSOCIATION SHALL POST ON THE ASSOCIATION'S WEBSITE THE FOLLOWING INFORMATION:

- (a) THE ASSOCIATION'S CURRENT RATES; AND
- (b) THE ASSOCIATION'S NET METERING REQUIREMENTS.

(2) EACH COOPERATIVE ELECTRIC ASSOCIATION SHALL KEEP AND MAKE AVAILABLE ON REQUEST TO A MEMBER OF THE ASSOCIATION ALL FINANCIAL AUDITS OF THE ASSOCIATION CONDUCTED IN THE LAST THREE FISCAL YEARS.

**SECTION 4.** In Colorado Revised Statutes, 40-9.5-109.5, **amend** (1) introductory portion, (2), and (3); and **add** (1)(d) and (1)(e) as follows:

**40-9.5-109.5. Election policy - adoption - publication - contents.** (1) The board of directors of each cooperative electric association shall adopt a written policy governing the election of directors. ~~The election policy~~ ASSOCIATION shall ~~be posted~~ POST THE POLICY on the association's website, PROVIDE NOTICE OF THE POLICY AT THE TIME A PERSON BECOMES A MEMBER, AND PROVIDE A COPY OF THE POLICY TO A MEMBER UPON REQUEST. The election policy shall contain true and complete information on the following subjects:

(d) WHO IS ENTITLED TO VOTE IN AN ELECTION, INCLUDING HOW JOINT MEMBERS MAY VOTE; AND

(e) HOW A MEMBER MAY OBTAIN AND CAST A BALLOT.

(2) In addition to the ~~posting required in~~ REQUIREMENTS OF subsection (1) of this section, information on how to become a candidate and the schedule for elections shall be ~~communicated to each member in a mailing and on the association's website~~ POSTED ON THE ASSOCIATION'S WEBSITE AND OTHERWISE PUBLICIZED BASED ON A MEMBER'S PREFERRED METHOD OF COMMUNICATION no less than two months before petitions to become a candidate are due.

(3) The ~~ballot mailing~~ deadline TO RETURN BALLOTS shall be posted on the website at least ~~three~~ TWO months before the deadline and shall remain so posted until after the election.

**SECTION 5.** In Colorado Revised Statutes, **add** 40-9.5-109.7 as follows:

**40-9.5-109.7. Electronic participation - meetings - elections conducted by mail or electronic means - definition.** (1) A COOPERATIVE ELECTRIC ASSOCIATION MAY ADOPT PROVISIONS IN ITS BYLAWS AUTHORIZING MEMBERS TO PARTICIPATE ELECTRONICALLY IN MEMBER MEETINGS OF THE ASSOCIATION.

(2) (a) NOTWITHSTANDING SECTION 7-55-110 OR ANY OTHER PROVISION OF LAW TO THE CONTRARY, A COOPERATIVE ELECTRIC ASSOCIATION MAY ADOPT PROVISIONS IN ITS BYLAWS AUTHORIZING MEMBERS TO VOTE ELECTRONICALLY IN AN ELECTION OF DIRECTORS OF THE BOARD OR IN AN ELECTION ON ANY MATTER REQUIRING A VOTE OF THE MEMBERSHIP. IF AUTHORIZED BY ITS BYLAWS, THE ASSOCIATION MAY ESTABLISH A SECURE AND VERIFIABLE ELECTRONIC TRANSMISSION SYSTEM THROUGH WHICH A MEMBER MAY APPLY FOR, RECEIVE, AND RETURN A BALLOT IN AN ELECTION.

(b) AS USED IN THIS SECTION, "SECURE AND VERIFIABLE ELECTRONIC TRANSMISSION SYSTEM" MEANS A SYSTEM THAT SAVES AND IS CAPABLE OF PRODUCING THE RECORDS NECESSARY TO AUDIT THE OPERATION OF THE ELECTRONIC TRANSMISSION, INCLUDING A PAPER RECORD OF ALL BALLOTS SENT AND RECEIVED.

(3) NOTWITHSTANDING SECTION 7-55-119, A MEMBER WHO REGISTERS IN PERSON OR ELECTRONICALLY AT ANY COOPERATIVE ELECTRIC ASSOCIATION MEETING OR WHO CASTS A VOTE THROUGH MAIL BALLOT OR A SECURE ELECTRONIC TRANSMISSION SYSTEM IF AUTHORIZED BY THE ASSOCIATION'S BYLAWS IS CONSIDERED PRESENT IN PERSON FOR THE PURPOSE OF DETERMINING A QUORUM FOR ACTION BY THE MEMBERSHIP.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COOPERATIVE ELECTRIC ASSOCIATION MAY ADOPT PROVISIONS IN ITS BYLAWS ALLOWING DIRECTORS ON THE BOARD OF DIRECTORS TO PARTICIPATE AND VOTE ELECTRONICALLY IN MEETINGS OF THE BOARD OF DIRECTORS. A MEETING OF THE BOARD OF DIRECTORS THAT IS CONDUCTED ELECTRONICALLY MUST ALLOW MEMBERS OF THE ASSOCIATION AN OPPORTUNITY TO ADDRESS THE BOARD IN ACCORDANCE WITH SECTION 40-9.5-108 (2)(b).

**SECTION 6.** In Colorado Revised Statutes, 40-9.5-110, **amend** (1)(a), (1)(b), and (2)(a) as follows:

**40-9.5-110. Board of directors of cooperative electric associations - nomination - elections.** (1) (a) A nomination for director on the board of directors of a cooperative electric association may be made by written petition signed by at least fifteen members of such association, and filed with the board of directors of such association no later than ~~forty-five~~ SIXTY days prior to the date of the election. Any petition so filed shall designate the name of the nominee and the term for which nominated. The name of a nominee shall appear on the ballot if the nominating petition is in apparent conformity with this section as determined by the secretary of the board. Nomination and election of directors by districts, if provided for in the bylaws of the association, shall be permitted.

(b) ~~Candidates~~ EACH CANDIDATE for ~~positions~~ A POSITION on the board of directors ~~shall be~~ IS entitled to receive a membership lists, LIST in a usable format, ~~on the same basis and at the same time as such lists are made available to incumbent directors running for reelection~~ AN ELECTRONIC FORMAT UPON RECEIPT AND VERIFICATION OF A VALID PETITION. THE MEMBERSHIP LIST MUST INCLUDE THE NAMES AND ADDRESSES OF ALL MEMBERS, INCLUDING ALL JOINT MEMBERS, AS THEY APPEAR IN THE ASSOCIATION'S RECORDS. Candidates shall use such lists only for purposes of the election and shall return or destroy them immediately after the election.

(2) (a) (I) Each member of the association is entitled to vote in the election of directors on the board of directors. ~~either~~ IN THE CASE OF A JOINT MEMBERSHIP, ANY ONE JOINT MEMBER MAY CAST THE VOTE FOR THE MEMBERSHIP. A MEMBER MAY VOTE IN PERSON at a meeting held for such purpose, ~~or by mail, but not both~~ OR BY ELECTRONIC MEANS IF AUTHORIZED BY THE ASSOCIATION'S BYLAWS. A member who has voted by mail OR BY ELECTRONIC MEANS is not entitled to vote at the meeting.

(II) Mail voting must be in writing on ballots provided by the association. The mail ballot shall be voted by the member, ~~placed in a special secrecy sleeve or inner envelope provided for the purpose so as to conceal the marking on the ballot,~~ deposited in a return envelope, which must be signed by the voting member, and mailed back to the association or to an independent third party with whom the association has contracted for the storage and counting of ballots in accordance with ~~paragraph (c) of this subsection (2)~~ SUBSECTION (2)(c) OF THIS SECTION. FOR THE BALLOT OF A JOINT MEMBERSHIP, THE BALLOT ENVELOPE MAILED TO THE JOINT MEMBER MUST INCLUDE THE NAME OF EACH ELIGIBLE VOTER. ANY ONE OF THE JOINT MEMBERS MAY CAST THE BALLOT. THE JOINT MEMBER WHO CASTS THE BALLOT SHALL SIGN THE RETURN ENVELOPE.

(III) AN ASSOCIATION MAY PROVIDE A SECRECY SLEEVE OR INNER ENVELOPE TO CONCEAL THE MARKINGS ON A MAIL BALLOT IN THE RETURN ENVELOPE. A mail ballot ~~received~~ RETURNED in a signed return envelope but without a ~~secrecy sleeve or inner envelope~~ THE MARKINGS CONCEALED is nonetheless valid and shall be counted.

**SECTION 7.** In Colorado Revised Statutes, **add** 40-9.5-110.5 as follows:

**40-9.5-110.5. Directors - required policies.** (1) THE BOARD OF EACH COOPERATIVE ELECTRIC ASSOCIATION SHALL ADOPT WRITTEN POLICIES CONCERNING:

(a) THE COMPENSATION PROVIDED TO DIRECTORS ON THE BOARD OF DIRECTORS, INCLUDING INFORMATION ON ANY AUTHORIZED PER DIEM AMOUNTS, AND THE VALUE OF ANY OTHER BENEFITS, SERVICES, OR GOODS THAT DIRECTORS RECEIVE.

(b) THE REQUIREMENTS AND PROCEDURES FOR A DIRECTOR ON THE BOARD OF DIRECTORS TO DISCLOSE IN WRITING ANY CONFLICTS OF INTEREST. AT A MINIMUM, AN ASSOCIATION'S POLICY MUST REQUIRE DISCLOSURE WHEN A DECISION BEFORE THE BOARD COULD PROVIDE DIRECTLY AND AS A PROXIMATE RESULT OF THE DECISION A FINANCIAL OR OTHER MATERIAL BENEFIT TO:

(I) THE DIRECTOR, IF THE BENEFIT IS UNIQUE TO THAT DIRECTOR AND NOT SHARED BY SIMILARLY SITUATED COOPERATIVE MEMBERS;

(II) A PARENT, GRANDPARENT, SPOUSE, PARTNER IN A CIVIL UNION, CHILD, OR SIBLING OF THE DIRECTOR, IF THE BENEFIT IS UNIQUE TO THAT PERSON AND NOT SHARED BY SIMILARLY SITUATED COOPERATIVE MEMBERS; OR

(III) AN ENTITY IN WHICH THE DIRECTOR IS AN OFFICER OR DIRECTOR OR HAS A FINANCIAL INTEREST UNIQUE TO THAT DIRECTOR.

(2) (a) SUBJECT TO SUBSECTION (2)(b) OF THIS SECTION, A DIRECTOR ON THE BOARD OF DIRECTORS SHALL AT ALL TIMES FULFILL THE DIRECTOR'S DUTY OF LOYALTY TO THE ASSOCIATION, AND SHALL NOT ALLOW A CONFLICT OF INTEREST TO IMPAIR THE DIRECTOR'S LOYALTY TO THE ASSOCIATION.

(b) NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, IF AN INDIVIDUAL IS A DIRECTOR ON THE BOARD OF DIRECTORS OF BOTH A DISTRIBUTION COOPERATIVE ELECTRIC ASSOCIATION AND A GENERATION AND TRANSMISSION COOPERATIVE ELECTRIC ASSOCIATION, THE DIRECTOR OWES FIDUCIARY DUTIES TO BOTH ASSOCIATIONS AND SHALL NOT BE REQUIRED TO GIVE PRIORITY TO A FIDUCIARY DUTY THE DIRECTOR OWES TO ONE ASSOCIATION OVER THE DUTIES THE DIRECTOR OWES TO THE OTHER ASSOCIATION.

**SECTION 8.** In Colorado Revised Statutes, **amend** 40-9.5-112 as follows:

**40-9.5-112. Provisions applicable to cooperative electric associations.**

(1) Except as otherwise provided in this part 1, the provisions of article 55 of title 7 ~~C.R.S.~~ shall apply to cooperative electric associations. In the case of any irreconcilable conflict between said ~~article~~ ARTICLE 55 and this part 1, this part 1 shall control.

(2) NOTWITHSTANDING ANY PROVISION OF ARTICLE 55 OF TITLE 7, A COOPERATIVE ELECTRIC ASSOCIATION MAY AUTHORIZE JOINT MEMBERSHIPS IN ITS BYLAWS.

(3) Section 40-4-105 shall apply to cooperative electric associations with respect to crossing of railroad rights-of-way.

**SECTION 9.** In Colorado Revised Statutes, **amend** 40-9.5-114.5 as follows:

**40-9.5-114.5. Applicability of sections 40-9.5-108 to 40-9.5-112. The**

~~provisions of Sections 40-9.5-108 to 40-9.5-112 shall be applicable~~ APPLY to all cooperative electric associations, ~~with membership of more than twenty-five thousand members~~ whether regulated under this part I or the "Public Utilities Law", articles 1 to 7 of this ~~title~~ TITLE 40. NOTWITHSTANDING SECTION 40-9.5-102 (1), SECTIONS 40-9.5-109, 40-9.5-110.5, AND 40-9.5-111 APPLY TO A NONPROFIT GENERATION AND TRANSMISSION COOPERATIVE ELECTRIC ASSOCIATION THAT PROVIDES WHOLESALE ELECTRIC SERVICE DIRECTLY TO COLORADO COOPERATIVE ELECTRIC ASSOCIATIONS THAT ARE ITS MEMBERS.

**SECTION 10. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 29, 2021